months. The Collector valued all these pieces of land at $400 an acre, which is substantially less than the amounts which the applicants had paid for them. The Collector and Mr. Stewart, in making their assessments, gave their valuations solely upon the value of the rubber on the land and *not upon the land itself*. The Assessors and I feel that this was not a correct procedure to have adopted. It is true that at the time of the acquisition the land was in use for rubber production but no account was taken of the potentialities of the land for other purposes, that is to say, for other economic crops which might well be more financially productive than would be in the case of old or poor rubber trees. If such a basis of valuation were to be regarded as a proper basis circumstances could be visualized where, if the production of rubber became wholly uneconomic, the land would be regarded as worthless and, as such, not available for compensation. In addition to these considerations, the Assessors and I feel that it could never be a correct procedure to compensate persons, whose lands have been compulsorily acquired, by offering them substantially less than what they have paid for the land — particularly in this present case where the land had been bought by the applicants so shortly before the acquisition took place. It could never be a sound proposition that a man dispossessed of his property could be required to make a financial sacrifice except he was willing to do so. In our view the proper amount to be awarded is the amount which each applicant paid. The applicants may have paid more than other people would have paid for the land — they may even have paid more than the land was worth to a cautious purchaser but, even so, the principle remains the same. Different considerations might apply in any case where it could be shown that a purchaser speculated in the purchase of land on the chance that it would be acquired by the Government. No suggestion of such speculation arises in this case. In the opinion of the Assessors and myself, the proper compensation payable to them in respect of the acquisition of their lands is the price which they paid for it together with, in each case, an amount due in respect of natural upkeep and these we assess as follows :—

B — $600
C, D — As there was no claim there is nothing to assess.
E — $500
F — $2,000
G — $2,500
H — $6,500

I have explained to the Assessors the legal position regarding the assessment for compensation.

No order as to costs, since the applicants do not ask for them.

Order accordingly.

Solicitors for the applicants: *Shearn, Delamore & Co.*

SINNU v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson J.) May 13, 1955]

[Ipoh — Criminal Appeal No. 17 of 1955]

Town Boards Enactment (Cap. 137), s. 91(i) — Demolition — Application for by Chairman of Town Board not intimated to accused — Irregularity curable under s. 442 of Criminal Procedure Code (Cap. 6).

The appellant in this case was convicted of commencing a building without giving notice and without having plans approved contrary to s. 91(i) of the Town Boards Enactment. He was fined $50 and an order for demolition of the building was made in addition.

Counsel for the appellant contended that the order of demolition should be set aside on the ground that the record did not show on the face of it that the application for it was made by the Chairman of the Town Council.

The learned Judge called for a report from the learned Magistrate who reported that at the time he had before him a written application for demolition order signed by the Chairman of the Town Council. This was forwarded to the learned Judge for his perusal.

Held: (1) the application should have been intimated to the accused and a copy of it should have been included in the record of the case forwarded to the Court; (2) in the circumstances of the case the failure of the Magistrate to intimate the existence of the application to the accused was an irregularity which was capable of being cured by virtue of s. 422 of the Criminal Procedure Code.

Cases referred to:—

(1) *Lee Kie Lie's case* Perak Criminal Revision No. 42 of 1953 — unreported.

(2) *Lew Yew v. Public Prosecutor* (1953) M.L.J. 211.

MAGISTRATE'S CRIMINAL APPEAL.

C. N. Lim for the appellant.

I. Talong Davies (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Thomson J. : — The appellant in this case was convicted on 18th February, 1955, before the Magistrate at Ipoh of commencing a building within the Ipoh and Menglembu Town Council Area without giving notice and without having plans approved in contravention of section 91(i) of the Town Boards Enactment. He was convicted and sentenced to pay a fine of $50. In addition, an order was made for the demolition of the building.

Against that conviction and sentence and order of demolition the appellant appealed and his appeal came on for hearing before me on 14th April, 1955.

As regards the conviction and sentence I took the view that the appeal was without substance and I dismissed it.

With regard to the demolition order, however, the point was taken by counsel for the appellant that that order should be set aside on the ground that the record

did not shew on the face of it that the application for it was made by the Chairman of the Town Council.

The record showed that the Prosecution was conducted by a Health Inspector. As, however, the Magistrate in his Grounds of Judgment stated that the application for demolition was made by the Chairman of the Town Council, I reserved judgment to enable a report to be obtained as to the circumstances in which this application had been made.

The Magistrate has now reported that at the time he had before him a written application for a demolition order signed by the Chairman of the Town Council and dated 11th January, 1955, which he has forwarded for my perusal. This application should, of course, have been intimated to the accused and a copy of it should have been included in the record of the case forwarded to this Court. It was, however, in existence and before the Magistrate and as the making of the demolition order has not been in any way attacked on its merits I take the view that in all the circumstances of the case the failure of the Magistrate to intimate the existence of the application to the accused is an irregularity which is capable of being cured by virtue of section 422 of the Criminal Procedure Code. The appeal against the order must therefore be dismissed.

Before departing from the case, I would repeat the following observation which I made in *Lee Kie Lie's case*[1] :—

"I take this opportunity, however, of directing the attention of Magistrates to the recently decided case of Lew Yew v. Public Prosecutor[2] where it was held in effect that a Demolition Order under Section 92 of the Town Boards Enactment can only be made on the application of the Chairman of the Town Board concerned or his Deputy. This does not, of course, mean that it is necessary in every case for the Chairman or his Deputy to appear in Court to ask for the Order. It is sufficient if the application has been specifically authorised by the Chairman or his Deputy although it may be actually made by a Sanitary Inspector or some other functionary. It is the duty, however, of the Magistrate to ensure that the law is complied with and in order to satisfy himself in this regard he should require the Prosecuting Officer in every such case to produce written authority for the application signed by the Chairman or his Deputy. To avoid misunderstanding I would add that such an authority should relate in terms to the actual application before the Court and that it would be unsafe to rely on any authority in purely general terms."

Although the point has no real bearing on the present case I must point out that that passage is to be read together with and in the light of the judgment of Bellamy J. which is mentioned. If that is done it will be clear, though it should be clear without so doing, that in using the expression "Deputy" I was referring to a Deputy Chairman of the Town Board or Town Council and not to any delegate of either the chairman or Deputy Chairman.

Appeal dismissed.

CHAN CHUNG HOONG v. CHEOW VOOI PENG

[O. C. J. (Thomson J.) May 17, 1955]
[Ipoh — Civil Suit No. 389 of 1954]

Executors and Fatal Accidents Enactment (Cap. 19), ss. 3 and 4 — Death by negligence — Damages — Action for loss of support — Action for damages to estate — Delay in commencing proceedings — Whether statute barred — Civil Law Enactment, 1937, s. 4 — Administration expenses.

The plaintiff in this case was the administrator of the estate of one Chan Cheok Meng who died on May 7, 1952 as a result of the negligent driving of a motor vehicle by the defendant. He was suing both as administrator and for the benefit of himself as father of the deceased and on behalf of the mother of the deceased for damages to himself and his wife for the loss of support and to the estate of the deceased.

The proceedings were not commenced until October 30, 1954.

S. 4(v) of the Executors and Fatal Accidents Enactment provides that an action for the loss of support shall be brought within 12 calendar months after the death of the deceased person; s. 3 of the same Enactment gives the executor of a deceased person the right to bring an action for any wrong committed in the lifetime of the deceased person which occasioned pecuniary loss to the estate but the exercise of that right is made subject to a period of limitation of one year. But s. 4(i) of the Civil Law Enactment, 1937, provides in general terms that all causes of action vested in a deceased person shall survive for the benefit of his estate.

Held: (1) as s. 4(v) of the Executors and Fatal Accidents Enactment had not been complied with the claim for loss of support was statute barred; (2) s. 4(i) of the Civil Law Enactment, 1937, superseded the provisions of s. 3 of the Executors and Fatal Accidents Enactment, and therefore the claim for damages to the estate in respect of the loss of expectation of life and the claim for funeral expenses were not statute barred.

[**Editorial Note:**— On the question of administration expenses, Thomson J., at the conclusion of the case, in a separate oral judgment said: "I gather from *Bingham's* book on Motor Claims Cases which has been just put before me that it is usual to allow something in this connection in England. I see that something in this connection was recently allowed in Penang and in a previous case in Ipoh I myself allowed $150. I will follow my own previous decision and allow $150."]

ACTION.

S. P. Seenivasagam for the plaintiff.

K. C. Chan for the defendant.

Thomson J. (delivering oral judgment) : — This action arises by reason of the death of one Chan Cheok Meng who died on 7th May, 1952, his death being alleged to have been the result of the negligent driving of a motor vehicle by the defendant on the previous day, that is to say, 6th May, 1952. The plaintiff is the administrator of the estate of the deceased and is suing both as such administrator and for the benefit of himself as father of the deceased and on behalf of the mother of the deceased for damages, in the first place, to the estate of the deceased, and, in the second place, to himself and to his wife by reason of loss of support.